

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DEUTSCHE BANK NATIONAL TRUST
COMPANY,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC, *et al.*,

Defendants.

Case No. 2:14-cv-001131-APG-VCF

**ORDER DENYING MOTION TO
DISMISS**

(ECF No. 26)

This is a dispute over property located at 224 West La Madre Way in Las Vegas. Plaintiff Deutsche Bank National Trust Company held a senior deed of trust encumbering the property and intends to foreclose because the former owner has stopped making mortgage payments. However, defendant Pearl Cove III Homeowners Association previously foreclosed on a homeowners association ("HOA") lien after the property owners did not pay their HOA assessments. Defendant SFR Investments Pool 1, LLC purchased the property at the HOA foreclosure sale. Deutsche seeks to quiet title to the property, contending that the HOA foreclosure sale did not extinguish its deed of trust.

In its amended complaint against Pearl Cove and SFR, Deutsche asserts the HOA sale to SFR is a voidable transfer under Nevada Revised Statutes ("NRS") § 112.190. ECF No. 18. Deutsche also seeks declaratory relief that the HOA sale was defective and not commercially reasonable, and it seeks to quiet title. Finally, Deutsche contends NRS Chapter 116 violates the Fifth Amendment to the United States Constitution because it allows the HOA to take Deutsche's security interest in the property without just compensation. SFR filed counterclaims to quiet title and for slander of title. ECF No. 20.

Deutsche now moves to dismiss SFR's counterclaims or alternatively for partial summary judgment. First, Deutsche argues that there is no reasonable dispute over the property's value at

1 the time SFR purchased the property because SFR stated in a declaration of value at the time of
2 the HOA sale that the property was worth \$92,720.00. Deutsche thus argues that the element of
3 inadequate consideration for its state law theories, such as commercial reasonableness or
4 fraudulent transfer, has been met because SFR paid only \$17,100.00 for the property. Deutsche
5 also argues Chapter 116 violates the Due Process and Takings Clauses of the Constitution.

6 SFR responds that it never signed the declaration of value and the property is worth what
7 it paid at the publicly-held auction. SFR also argues there was no taking or state action to support
8 a Takings claim, and there was no due process violation.

9 I deny the motion to dismiss. SFR did not prepare the declaration of value stating that the
10 property was worth \$92,720.00 and it has presented evidence and argument that the property's
11 value was substantially less than that. Even if there is a Takings Clause violation, an issue which
12 I do not decide at this time, Deutsche has not explained why the proper remedy is to void the sale
13 to SFR as opposed to Deutsche receiving just compensation from the State. Finally, there is no
14 due process violation.

15 **I. BACKGROUND**

16 The property was owned by Apande Nelson Ejelle and Martha Massango, who purchased
17 the property for \$277,000.00 in 2004. ECF No. 26-1 at 2-4. The property was encumbered by a
18 deed of trust that eventually was transferred to Deutsche. *Id.* at 6-63.

19 In 2011, Pearl Cove recorded a notice of delinquent assessment lien because the owners
20 failed to pay their HOA assessments. *Id.* at 67. Pearl Cove then recorded a notice of default and
21 election to sell and a notice of foreclosure sale. *Id.* at 69-73. The property was sold at public
22 auction in March 2013 to SFR for \$17,100.00. *Id.* at 75.

23 Attached to the recorded foreclosure deed is a "declaration of value." *Id.* at 77. That
24 declaration sets the value of the property at \$92,720.00 at the time of the foreclosure sale. *Id.* The
25 form is signed by "Misty Blanchard" as "agent." *Id.* The foreclosure deed identifies Blanchard as
26 an agent for Nevada Association Services, Inc., the HOA's agent for conducting the foreclosure.
27 *Id.* at 75. There is no other signature on the declaration of value. *Id.* at 77. Christopher Hardin,
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1 SFR's manager, attests that SFR "did not fill-out, complete, draft, write, sign, or in any way
2 prepare the Declaration of Value form." ECF No. 32-1 at 2.

3 **II. ANALYSIS**

4 In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken
5 as true and construed in a light most favorable to the non-moving party." *Wylar Summit P'ship v.*
6 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not necessarily
7 assume the truth of legal conclusions merely because they are cast in the form of factual
8 allegations in the plaintiff's complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-
9 55 (9th Cir. 1994). A plaintiff must make sufficient factual allegations to establish a plausible
10 entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Such allegations
11 must amount to "more than labels and conclusions, [or] a formulaic recitation of the elements of a
12 cause of action." *Id.* at 555.

13 Summary judgment is appropriate if the pleadings, discovery responses, and affidavits
14 demonstrate "there is no genuine dispute as to any material fact and the movant is entitled to
15 judgment as a matter of law." Fed. R. Civ. P. 56(a), (c). A fact is material if it "might affect the
16 outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
17 (1986). An issue is genuine if "the evidence is such that a reasonable jury could return a verdict
18 for the nonmoving party." *Id.*

19 The party seeking summary judgment bears the initial burden of informing the court of the
20 basis for its motion and identifying those portions of the record that demonstrate the absence of a
21 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden
22 then shifts to the non-moving party to set forth specific facts demonstrating there is a genuine
23 issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir.
24 2000). I view the evidence and reasonable inferences in the light most favorable to the non-
25 moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

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1 **A. Value of the Property**

2 Deutsche's motion rests on the proposition that SFR has admitted, through the declaration
 3 of value, that the property's value was \$92,720.00 on the date of the HOA foreclosure sale.
 4 However, Deutsche has not shown, either on a dismissal or summary judgment standard, that SFR
 5 agreed that the property's value was \$92,720.00. The declaration of value was signed by the
 6 HOA's agent. There is no other signature on the declaration. SFR's manager has denied SFR
 7 participated in preparing or signing the declaration. Additionally, SFR argues that the property's
 8 value was either the price fetched at public auction, which the evidence shows was \$17,100.00, or
 9 a value less than what otherwise might be considered fair market or assessed value because the
 10 market was plagued by uncertainty about the effect of an HOA foreclosure sale prior to *SFR*
 11 *Investments Pool I v. U.S. Bank*, 334 P.3d 408, 409 (Nev. 2014) (en banc). See *Bourne Valley*
 12 *Court Trust v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 1136 (D. Nev. 2015). Thus,
 13 although Deutsche contends that \$17,100.00 is an inadequate price as a matter of law based on its
 14 argument that the proper valuation of the property is \$92,720.00, the property's value as of the
 15 date of the sale is in dispute, both legally and factually. I therefore deny Deutsche's motion to
 16 dismiss SFR's counterclaims, or alternatively for partial summary judgment on the property's
 17 value as of the date of the HOA foreclosure sale.

18 **B. Takings**

19 Deutsche argues that NRS Chapter 116 and the Supreme Court of Nevada's interpretation
 20 of that statutory scheme in *SFR* constitute a taking for a public purpose without just
 21 compensation. SFR responds that there is no state action, Deutsche had opportunities to protect
 22 its interest, and even if there was a taking Deutsche has not explained why the proper remedy is
 23 voiding the sale rather than awarding just compensation from the State.

24 "The Fifth Amendment, made applicable to the States through the Fourteenth
 25 Amendment, prohibits the taking of 'private property . . . for public use, without just
 26 compensation.'" *Washington Legal Found. v. Legal Found. of Washington*, 271 F.3d 835, 851
 27 (9th Cir. 2001) (en banc) (quoting U.S. Const. amend. V). Consequently, to prevail on its
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1 argument that the decision in *SFR* constituted a taking in violation of the Fifth and Fourteenth
2 Amendments, Deutsche must show “that the interest at issue was [its] private property and that it
3 was taken without just compensation.” *Id.*

4 Generally, a plaintiff may not establish a taking before the state has had the opportunity to
5 decide the reach of a challenged statute or regulation. *MHC Fin. Ltd. P’ship v. City of San Rafael*,
6 714 F.3d 1118, 1130 (9th Cir. 2013). Accordingly, for a takings claim to be ripe, the plaintiff
7 usually must (1) obtain a final decision from the state and (2) seek compensation through
8 available state procedures. *Id.* (citing *Williamson Cnty. Planning Comm’n v. Hamilton Bank*, 473
9 U.S. 172 (1985)). However, the first ripeness requirement does not apply to facial challenges.
10 *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651, 655 (9th Cir. 2003).
11 Additionally, there are exceptions to the second ripeness requirement, such as unavailable or
12 inadequate state procedures or “where resorting to state remedies would be futile.” *Washington*
13 *Legal Found.*, 271 F.3d at 851. As the party asserting a Takings Clause violation without first
14 exhausting state remedies, Deutsche bears the burden of establishing that state remedies are
15 unavailable or inadequate, or that resort to state remedies would be futile. *Carson Harbor Vill.*,
16 *Ltd. v. City of Carson*, 353 F.3d 824, 827-28 (9th Cir. 2004).

17 Deutsche has not shown its takings argument is ripe because it has not shown that it
18 sought just compensation from the State and was denied. It also has not shown that state
19 procedures are inadequate or unavailable, or that resort to state procedures would be futile.
20 Deutsche bears the burden of making these showings and it has not done so. Thus, I deny
21 Deutsche’s motion based on a takings theory under the Fifth Amendment.

22 Even if I “exercised [my] discretion not to impose the prudential requirement of
23 exhaustion,” I would deny Deutsche’s motion based on a taking. *Guggenheim v. City of Goleta*,
24 638 F.3d 1111, 1118 (9th Cir. 2010) (en banc). The remedy Deutsche seeks is to void the sale to
25 SFR. But a takings claim requires just compensation from the government, not from a private
26 third party. *See, e.g., Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 535 U.S.
27 302, 322 (2002) (“When the government physically takes possession of an interest in property for
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1 some public purpose, it has a categorical duty to compensate the former owner [.]); *First English*
 2 *Evangelical Lutheran Church of Glendale v. Los Angeles Cnty., Cal.*, 482 U.S. 304, 319 (1987)
 3 (“Where this burden results from governmental action that amounted to a taking, the Just
 4 Compensation Clause of the Fifth Amendment requires that the government pay the landowner
 5 for the value of the use of the land during this period.”); *id.* at 318-19 (“It is axiomatic that the
 6 Fifth Amendment’s just compensation provision is designed to bar Government from forcing
 7 some people alone to bear public burdens which, in all fairness and justice, should be borne by
 8 the public as a whole.”) (quotation omitted). Deutsche has not explained why, even if NRS
 9 Chapter 116 and the Supreme Court of Nevada’s *SFR* decision constitute a taking (an argument
 10 on which I take no position at this time), that would result in voiding the sale to SFR as opposed
 11 to requiring just compensation from the State. Consequently, I deny Deutsche’s motion based on
 12 a taking.

13 **C. Due Process/Punitive Damage Award**

14 Deutsche argues that its due process rights were violated because it was arbitrarily and
 15 unreasonably punished by having its security interest extinguished by the foreclosure of the HOA
 16 lien, which was a fraction of the value of Deutsche’s security interest. Deutsche relies on *BMW*
 17 *of North America, Inc. v. Gore*, 517 U.S. 559 (1996) for this proposition. SFR responds that
 18 *BMW* does not apply because Deutsche lost its property interest due to its failure to protect that
 19 interest, not because the State or the HOA imposed a punitive damages award on Deutsche.

20 *BMW* is inapplicable to this case. In *BMW*, the Supreme Court held that the due process
 21 clause “prohibits a State from imposing a grossly excessive punishment on a tortfeasor.” 517 U.S.
 22 at 562 (quotation omitted). *BMW* involves the amount of punitive damages that may be awarded
 23 against a tortfeasor in furtherance of a State’s “legitimate interests in punishing unlawful conduct
 24 and deterring its repetition.” *Id.* at 568.

25 Deutsche is not a tortfeasor and no jury has awarded punitive damages against it, much
 26 less grossly excessive punitive damages. As I have explained elsewhere, NRS Chapter 116 does
 27 not violate due process because it gives the deed of trust holder adequate notice and opportunities
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1 to be heard to prevent the loss of a security interest. *See Nationstar Mortgage LLC v. Amber Hills*
2 *II Homeowners Ass'n*, No. 2:15-cv-01433-APG-CWH, 2016 WL 1298108, at *6-9 (D. Nev. Mar.
3 31, 2016); *Las Vegas Dev. Grp., LLC v. Yfantis*, --- F. Supp. 3d. ----, No. 2:15-cv-1127-APG-
4 CWH, 2016 WL 1248693, at *3-6 (D. Nev. Mar. 24, 2016). Similar to the extinguishment of any
5 other interest through foreclosure, if it is found in this case that Deutsche's security interest was
6 extinguished by the HOA sale, it will not be because the State or the HOA imposed a grossly
7 excessive punishment on Deutsche. It will be because Deutsche failed to protect its interest
8 despite notice and opportunities to do so. I therefore deny Deutsche's motion based on the due
9 process clause and *BMW*.

10 **III. CONCLUSION**

11 IT IS THEREFORE ORDERED that Deutsche Bank National Trust Company's motion to
12 dismiss or for partial summary judgment (**ECF No. 26**) is **DENIED**.

13 DATED THIS 25th day of July, 2016.



14 ANDREW P. GORDON
15 UNITED STATES DISTRICT JUDGE
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